

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:12-CV-504-H

WILLIAM SCOTT DAVIS, JR., and)
(a minor) J.F.D., Suing by,)
her and next friend,)

Plaintiffs,)

v.)

ORDER

MELANIE A SHEKITA,)
individually and as a Wake)
County N.C. Assistant)
District Attorney for the)
State of N.C., et al.,)

Defendants.)

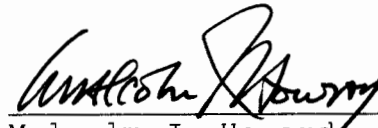
This matter is before the court on frivolity review. Magistrate Judge James E. Gates filed an Order and Memorandum and Recommendation ("M&R") on January 10, 2014, ordering that plaintiffs' motion to proceed in forma pauperis be granted and recommending that the underlying complaint be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2). Plaintiffs filed objections on January 27, 2014, objecting to the recommendation of dismissal and filed two motions seeking leave of court to amend his complaint [DE #23, 25, 26]. Plaintiffs also filed a motion for recusal of Magistrate Judge Gates [DE #29].

The M&R correctly determined that plaintiffs' complaint fails to state a claim upon which relief can be granted. Plaintiff has not properly alleged any state action on the part of defendants. Although plaintiffs seek leave to amend, no amended complaint is attached. Furthermore, a review of the motions and objections, which include plaintiffs' reasons to seek leave to amend, show that although plaintiffs have stated many conclusory allegations, they have alleged no facts to support a claim for relief. Therefore, plaintiffs' motions for leave to amend are DENIED [DE #25, 26].

A full and careful review of the M&R and other documents of record convinces the court that the recommendation of the magistrate judge is, in all respects, in accordance with the law and should be approved. Furthermore, the court finds no basis for the recusal of Judge Gates, thus plaintiffs' motion for recusal is DENIED [DE #29].

Accordingly, the court adopts the recommendation of the magistrate judge as its own; and for the reasons stated therein, the plaintiff's complaint is dismissed as frivolous for failure to state a claim upon which relief may be granted, and, alternatively, as malicious. The clerk is directed to close the case.

This 2nd day of ~~May~~^{June} 2014.

A handwritten signature in black ink, appearing to read "Malcolm J. Howard", written over a horizontal line.

Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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